

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

WAYNE LAFOUNTAIN,

Plaintiff,

v.

Case No. 2:05-cv-13  
HON. RICHARD ALAN ENSLEN

LINDA METRISH, et al.,

Defendants.

---

**REPORT AND RECOMMENDATION**

Plaintiff Wayne LaFountain filed this civil rights action pursuant to 42 U.S.C. § 1983 asserting Eighth Amendment violations due to exposure to environmental tobacco smoke. Plaintiff allegedly suffers with emphysema. Defendants requested plaintiff to sign a medical release for plaintiff's medical records. Plaintiff has refused to sign the medical release. Plaintiff claims that all his medical records are not relevant to this action. Defendants have filed a motion to dismiss the complaint for plaintiff's failure to provide his medical records and plaintiff has filed a motion for a protective order.

Defendants have never moved for an order to compel plaintiff to submit his medical records under Fed. R. Civ. P. 34 and 37. If defendants had obtained a court order and plaintiff then refused to obey a court order, dismissal of the action may appropriate. Rule 37(b)(2)(C). Dismissal of the action, at this time, is premature.

Similarly, in the opinion of the undersigned, plaintiff is not entitled to a protective order prohibiting discovery of his medical records. Plaintiff placed his medical condition at issue in this case by filing this action. Plaintiff is not allowed to decide which medical records he may

supply to defendants. Plaintiff's entire medical history may be relevant to his claim. Defendants are entitled to discover those records.

Accordingly, it is recommended that defendants' motion to dismiss (docket #8) be denied and plaintiff's motion for a protective order (docket #12) and motion to strike (docket #16) be denied.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within ten days of your receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR. 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal of those issues or claims addressed or resolved as a result of the Report and Recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley  
TIMOTHY P. GREELEY  
UNITED STATES MAGISTRATE JUDGE

Dated: August 31, 2005